

Award No. 8263
Docket No. TE-6913

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Whitley P. McCoy, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

UNION PACIFIC RAILROAD COMPANY (Eastern District)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Union Pacific Railroad (Eastern District), that:

1. Carrier violated the Agreement between the parties hereto, when on December 11, 12, 15, 16, 1952, it opened block and train order stations near Elm Creek and Overton, Nebraska, and failed and refused to assign employees covered by the Telegraphers' Agreement to perform the work in connection with the operation of such stations.

2. Carrier shall be required to compensate two senior idle extra employees on Seniority District No. 1, at pro rata rate, for each day such services were performed by employees not covered by Telegraphers' Agreement, and if no extra employees were idle on such day or days that two senior idle employees on said seniority district shall be compensated at the rate of time and one-half of standard rate for each day or days they were deprived of right to perform such work.

(Names of employees entitled to such compensation to be determined by joint check of Carrier's records.)

EMPLOYEES' STATEMENT OF FACTS: The Order of Railroad Telegraphers, hereinafter called Employees or Telegraphers, is the duly certified bargaining agent for certain employees (hereinafter specifically set forth) of Union Pacific Railroad Company, hereinafter called Carrier or Company. There is now in full force and effect an agreement between Carrier and Telegraphers, concerning wages, hours of service and other conditions of employment for employees covered thereby. The effective date of said agreement was February 1, 1951, copy of same is assumed to be on file with this Board and is, by reference, included herewith as though set out herein word for word.

This dispute involves failure of Carrier to assign telegraphers to perform work, exclusively covered by our agreement, at the newly established block and train order stations, located near Elm Creek and Overton, Nebraska, on December 11, 12, 15 and 16, 1952. The violation of the agreement, in depriving members of telegraphers' craft of the work involved, requires com-

It is hereby affirmed that all information and data herein set forth have been furnished to, discussed with, or are known to the Employees' Organization or the Claimants.

(Exhibits not reproduced.)

OPINION OF BOARD: On December 11, 12, 15, and 16, 1952, the Carrier was laying new rail on something less than a mile of the eastbound track of its double track main line between Elm Creek and Overton, Nebraska. It was necessary to take the eastbound track out of service between 8:01 A. M. and 2:01 P. M. on those days for that purpose, routing all trains on the westbound track. It stationed two conductors about eight miles apart, one at Elm Creek and the other at Overton, to control the "single tracked" portion of the line. The Carrier describes this operation as follows:

"Conductor Anderson was located at the east passing track switch at Overton, Mile Post 212.8, which is one-half mile east of the depot at Overton, Conductor Olson was located at the west passing track switch at Elm Creek, Mile Post 204.9, which is .31 of a mile west of the depot at Elm Creek. These two conductors were each assigned one brakeman whose duty it was to handle the switches between the passing track and the main line at both Overton and Elm Creek upon the instructions of the conductor. Conductor Anderson and Olson were provided with a portable telephone which was cut into the dispatcher's wire. Through this medium the conductors could each talk to the dispatcher and to each other.

"When the dispatcher on duty had either a westbound or an eastbound train coming he would call either Conductor Olson or Conductor Anderson and advise him that the train would arrive at the passing track at a certain time and to hold it there, or permit it to pass over the single track. The two conductors would then repeat to each other the instructions of the dispatcher; that is, which train or trains were to go through and which trains were to be held. This accomplished, the conductors would then instruct their brakemen to line the necessary switches to move the train agreed upon. For example, if a westbound train was at Elm Creek and the dispatcher on duty wanted this train to move to Overton on the single track, he would inform Conductor Olson at the passing track at Elm Creek to move it on the single track. Conductor Olson would then confer with Conductor Anderson to make certain they both understood that the train was to move from Elm Creek to Overton. Conductor Olson would then instruct his brakeman to line the switch for the westbound main line and signal the train to move. Conductor Anderson at the passing track at Overton would instruct his brakeman to see that the switches were lined for the westbound main track. In most instances, the trains moved through the section without stopping.

"This procedure was also followed for both westbound and eastbound trains and is known as the 'human staff system.'"

The Organization claims a call for the senior idle telegrapher on each of the days in question (the Carrier states that there were no extra employees available).

The claim is of course based upon the Scope Rule. Under our uniform decisions, where the Scope Rule merely lists the positions covered without specifying the work reserved, it is to be interpreted as reserving to the employees covered the work which customarily and traditionally has been performed exclusively by those employees. In this case the Scope Rule names among others, telegraphers, telephoners and block operators. Traditionally, these employees have handled all communications by telegraph and telephone controlling the operation and movements of trains. This is what Conductors Olson and Anderson did in this case, over the eight mile block set up here.

The Carrier no longer operates by manual block system, but the work which Anderson and Olson did is typical of block operator work. They held trains, and they "cleared the block", using the dispatcher's telephone wire to receive instructions and to transmit information and orders. It is true that no permanent records were kept, such as are ordinarily kept by a block operator. If they had been, then of course the matter would be completely free of any possible doubt. But the primary function of the block operator, telegrapher, or telephoner, is communication work in controlling the movement of trains. If in a particular situation the Carrier dispenses with records as unnecessary in that situation, the work constituting the primary function of the job does not thereby cease to be telegrapher work. It is also true, of course, that not every telephone call is telephoner's or telegrapher's work. But telegraph or telephone communication to control the operation of trains unquestionably belongs to this craft. This is not the simple case of the conductor of a train telephoning the nearest station that his train has cleared the main track, such as has been the subject of some of our awards.

The Carrier's principal defense is that this was the "human staff system", and that telegraphers have never been used on that system. From all that can be gathered from the record, the term "human staff system" is rather meaningless. A simple "staff" system, such as is familiar to all motorists, whereby one line of traffic is held up until the driver of the last car of the line moving in the opposite direction delivers a staff or flag to the watchman, is readily understood. Perhaps a "human staff" system would substitute a human being for the staff or flag. Of course such a system would not involve the use of either the telegraph or telephone, and therefore telegrapher or telephoner work would not be involved. Whether it would be the work of a "staffman", also listed in the Scope Rule, it is not necessary to decide.

At any rate it is clear that the above quoted description of the "human staff system" merely sets forth the method used in this case of closing and clearing a section of eight miles of track, i. e., of blocking trains, and using a telephone for that purpose. If a telegraph instead of a telephone had been used, I cannot conceive that the Carrier would have contended that this was not work belonging to the telegraphers.

The Carrier argues that past practice shows that this work does not belong to the telegraphers. Its proof of this consists of some letters relating to two incidents, one in 1935 and the other in 1937. It is impossible to tell from these letters whether the facts of those incidents were at all similar to those of the case before us. Certainly the letters do not show a block set-up in the manner of what was done in this case. All that can be said for those letters is that they show an insistence on the part of the Carrier that the "human staff system" does not require the use of telegraphers. This would be of some importance if there were any proof in this record of what was meant in 1935 and 1937 by "human staff system". There is no proof in the record even as to what the term means today but merely the description of what occurred in this case quoted above from the Carrier's Submission. The Carrier states that its description of what was done in this case "is known as the 'human staff system'." Such a statement does not amount to proof, and is wholly insufficient to justify assigning to employees outside the Organization the work of controlling the movement of trains over an eight mile block by the use of telephone communication.

The Carrier contends also that an award cannot be rendered in this case because notice was not given to Conductors Olson or Anderson, or to the Organization which represents them. An Award sustaining this claim and granting call pay to idle telegraphers, does not prejudice the rights of those conductors or their Organization. They were therefore not indispensable parties. For a more extended discussion of the question of notice, see Award No. 8264 decided today.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 10th day of March, 1958.

DISSENT TO AWARD NO. 8263, DOCKET NO. TE-6913

This Award is in serious error.

Here, the majority say, in part:

"Under our uniform decisions, where the Scope Rule merely lists the positions covered without specifying the work reserved, it is to be interpreted as reserving to the employees covered the work which customarily and traditionally has been performed exclusively by those employees."

But, in Award 7947, this same majority also stated, in part:

"The Employees cite not a single instance of such work having ever been performed by B & B forces. The evidence of practice is determinative of the meaning given the Scope Rule by the Parties."

Here, the Employees show not a single instance where, when one track of a double track was singled and trains were moved over the singled track without the use of train orders, any work involved in the movement of trains over the single track was ever performed by employees within the Scope Rule of the Telegraphers' Agreement.

This Scope Rule is of the same general type, wherein work is not defined, and our uniform decisions have held that PRACTICE thereunder must be determinative as to the intent of the parties. The Carrier asserted, without denial by the Employees, a PRACTICE over a period of many years concerning the involved work, and clearly documented the assertion of PRACTICE with supporting evidence. What this same majority stated in Award 8207, which involved communications to control the movement of trains, should have been controlling here, viz.,

"But where, as here, the Agreement has been interpreted for many years as permitting a certain practice, it is too late to contend to the contrary."

For the reasons shown this Award is in serious error.

/s/ J. E. Kemp
/s/ J. F. Mullen
/s/ R. M. Butler
/s/ W. H. Castle
/s/ C. P. Dugan